IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6812 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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HARMENDRA SINGH INDERJIT SINGH SEHGAL - Petitioner
Versus
APOLLO TYRES LIMITED - Respondent(s)

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Appearance :
Shri K. D. Pandya for Petitioner.
Though name of Shri Kiran C. Raval appears, none appears for the respondent.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/07/2007

ORAL JUDGMENT

The facts of the present case in a nutshell are that a charge-

sheet was issued to the present petitioner, the petitioner filed his reply and an inquiry was conducted and after second show cause notice, the petitioner was terminated from services. The petitioner filed a dispute before the learned Labour Court; the parties led evidence. The learned Labour Court held that from the statements of the witnesses of the Establishment, it would clearly appear that the present petitioner was engaged in selling of illicit liquor and such conduct was improper and contrary to the service conditions. However, the learned Labour Court held that for such an act of the petitioner, his removal from the services was a harsh punishment. Instead of maintaining the punishment of removal, the Court directed that dismissal would be proper, but, the respondent shall pay a sum of Rs.1 Lakh to the petitioner as compensation. Being aggrieved by the said award, the petitioner is before this Court.

2. Shri Pandya, learned Counsel for the petitioner, submitted that if the Court was of the opinion that removal was a harsh punishment, then, the Court below could not maintain the order of termination, nor could direct award of Rs.1 lakh as compensation. He submits that present is a case for reinstatement with full back-wages.

3. The findings recorded by the learned Labour Court are that the present petitioner was selling illicit liquor and was creating a bad

influence everywhere. The Court, though recorded everything against the interest of the petitioner, but, held that termination would be improper. At the same time, the learned Labour Court maintained the termination and directed award of Rs.1 Lakh as compensation.

4. If the findings of the Court were that the punishment was shockingly disproportionate, then, the Court could not maintain the order of termination nor could direct payment of Rs.1 Lakh towards compensation. Once the Court holds that the punishment was shockingly disproportionate, then, it cannot show exit to the employee nor can direct that termination be maintained and instead of any other relief, compensation be paid.

5. In the opinion of this court, the learned Labour Court below was confused in recording the findings and awarding the punishment in favour of the present petitioner. Maintaining all the findings relating to misconduct of the present petitioner, I set aside the observations made by the learned Labour Court that the punishment was disproportionate, therefore, the Court was entitled to interfere in the matter. I remand the matter back to the learned Labour Court with a direction to rehear the parties on the question that whether the punishment awarded to the petitioner was shockingly disproportionate to the wrong committed by him and if yes, whether he should be reinstated with full or partial

backwages or no back-wages or should he be paid compensation instead of reinstatement or in the alternative, whether in view of the misconduct exhibited by him in selling illicit liquor, should the Court refuse to grant him any relief.

6. The petitioner shall appear before the learned Labour Court on 7th August, 2007 and shall file a copy of this order enabling the learned Labour Court to know as to what it is required to do. The learned Labour Court shall issue notice to the other side and, after seeking the service report, shall proceed with the matter. It is, however, made clear that the learned Labour Court shall not be entitled to record further evidence. The duty of the learned Labour Court shall be to re-hear the parties on the question that whether the punishment of removal is shockingly disproportionate and to what relief, the petitioner is entitled to.

7. If the petitioner has received the sum of Rs.1 lakh, which was awarded to him as compensation, then, the same shall be deposited by him with the learned Labour Court on the date of appearance or within a further period of fifteen days from his appearance before the learned Labour Court. If the petitioner fails to re-deposit the money, then, his reference shall stand dismissed. A copy of this order be sent to the concerned Labour Court from the Court's side.

8. In the result, the petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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